

109TH CONGRESS
1ST SESSION

S. 1918

To amend the Immigration and Nationality Act to address the demand
for foreign workers.

IN THE SENATE OF THE UNITED STATES

OCTOBER 25, 2005

Mr. HAGEL introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to address
the demand for foreign workers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Strengthening America’s Workforce Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—WILLING WORKER PROGRAM

Sec. 101. Willing workers.

Sec. 102. Recruitment of United States workers.

Sec. 103. Admission of willing workers.

Sec. 201. Exemption of nonimmigrants with advanced degrees from numerical limits.

Sec. 202. Aliens not subject to numerical limitations on employment-based immigrants.

Sec. 301. Off campus work authorization for foreign students.

3 SEC. 101. WILLING WORKERS.

7 (1) by inserting “subject to section 212(v),” be-
8 fore “having a residence”; and

1 (2) by striking “temporary service or labor”
 2 and inserting “short-term service or labor, lasting
 3 not more than 9 months”.

4 (b) H-2C WORKERS.—Section 101(a)(15)(H)(ii)(b)
 5 of the Immigration and Nationality Act (8 U.S.C.
 6 1101(a)(15)(H)(ii)(b)) is amended by striking “profes-
 7 sion; or” and inserting “profession, or (c) subject to sec-
 8 tion 212(v), who is coming temporarily to the United
 9 States to perform labor or services, other than those occu-
 10 pation classifications covered under the provisions of
 11 clause (i)(b), (ii)(a), or (ii)(b) of this subparagraph or sub-
 12 paragraph (L), (O), or (P), for a United States employer,
 13 if United States workers qualified to perform such labor
 14 or service cannot be identified; or”.

15 **SEC. 102. RECRUITMENT OF UNITED STATES WORKERS.**

16 Section 212 of the Immigration and Nationality Act
 17 (8 U.S.C. 1182) is amended—

18 (1) by redesignating subsection (t) (as added by
 19 section 1(b)(2) of Public Law 108–449 (118 Stat.
 20 3470)) as subsection (u); and

21 (2) by adding at the end the following:

22 “(v)(1) An employer that seeks to employ an alien
 23 described in clause (ii)(b) or (ii)(c) of section
 24 101(a)(15)(H) shall, with respect to an alien described in
 25 such clause (ii)(b), 14 days prior to filing an application

1 under paragraph (3), and with respect to an alien de-
2 scribed in such clause (ii)(c), 30 days prior to filing an
3 application under paragraph (3), take the following steps
4 to recruit United States workers for the position for which
5 the nonimmigrant worker is sought:

6 “(A) Submit a copy of the job opportunity, in-
7 cluding a description of the wages and other terms
8 and conditions of employment, to the United States
9 Employment Services within the Department of
10 Labor (ES), which shall provide the employers with
11 an acknowledgment of receipt of the documentation
12 provided to the ES in accordance with this subpara-
13 graph.

14 “(B) Authorize the ES to post the job oppor-
15 tunity on ‘America’s Job Bank’ and local job banks,
16 and with unemployment agencies and other labor re-
17 ferral and recruitment sources pertinent to the job
18 in question.

19 “(C) Authorize the ES to notify the central of-
20 fice of the State Federation of Labor in the State
21 in which the job is located.

22 “(D) Post the availability of the job opportunity
23 for which the employer is seeking a worker in con-
24 spicuous locations at the place of employment for all
25 employees to see.

1 “(E) Advertise, with respect to an alien de-
2 scribed in such clause (ii)(b), for at least 3 consecu-
3 tive days, and for an alien described in such clause
4 (ii)(c), for at least 10 consecutive days, the avail-
5 ability of the job opportunity for which the employer
6 is seeking a worker in a publication with the highest
7 circulation in the labor market that is likely to be
8 patronized by a potential worker.

9 “(F) Based on recommendations by the local
10 job service, advertise the availability of the job op-
11 portunity in professional, trade, or ethnic publica-
12 tions that are likely to be patronized by a potential
13 worker.

14 “(2) An employer that seeks to employ an alien de-
15 scribed in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)
16 shall—

17 “(A) have offered the job to any United States
18 worker who applies and is qualified for the job for
19 which the nonimmigrant worker is sought and who
20 is available at the time of need; and

21 “(B) be required to maintain, for at least 1
22 year after the employment relationship is termi-
23 nated, documentation of recruitment efforts and re-
24 sponses received prior to the filing of the employer’s
25 application with the Secretary of Labor, including

1 resumes, applications, and, if applicable, tests of
 2 United States workers who applied and were not
 3 hired for the job the employer seeks to fill with a
 4 nonimmigrant worker.”.

5 **SEC. 103. ADMISSION OF WILLING WORKERS.**

6 (a) APPLICATION TO THE SECRETARY OF LABOR.—
 7 Section 212(v) of the Immigration and Nationality Act (8
 8 U.S.C. 1182(v)), as added by section 102, is amended by
 9 adding after paragraph (2) the following:

10 “(3) An employer that seeks to fill a position with
 11 an alien described in clause (ii)(b) or (ii)(c) of section
 12 101(a)(15)(H), shall file with the Secretary of Labor an
 13 application attesting that—

14 “(A) the employer is offering and will offer dur-
 15 ing the period of authorized employment to aliens
 16 admitted or provided status as a nonimmigrant de-
 17 scribed in clause (ii)(b) or (ii)(c) of section
 18 101(a)(15)(H), wages that are at least—

19 “(i) the actual wage level paid by the em-
 20 ployer to all other individuals with similar expe-
 21 rience and qualifications for the specific em-
 22 ployment in question; or

23 “(ii) the prevailing wage level for the occu-
 24 pational classification in the area of employ-
 25 ment, taking into account experience and skill

1 levels of employees, which level may be deter-
2 mined through private, independent wage sur-
3 veys,
4 whichever is greater, based on the best information avail-
5 able at the time of the filing of the application, and for
6 purposes of clause (ii) the prevailing wage level shall be,
7 if the job opportunity is covered by a collective bargaining
8 agreement between a union and the employer, the wage
9 rate set forth in the collective bargaining agreement, or
10 if the job opportunity is not covered by a collective bar-
11 gaining agreement between a union and the employer, and
12 it is in an occupation that is covered by a wage determina-
13 tion under a provision of subchapter IV of chapter 31 of
14 title 40, United States Code, the appropriate statutory
15 wage determination;

16 “(B) the employer will offer the same wages,
17 benefits, and working conditions for such non-
18 immigrant as those provided to United States work-
19 ers similarly employed in the same occupation and
20 the same place of employment;

21 “(C) there is not a strike, lockout, or labor dis-
22 pute in the occupational classification at the place of
23 employment (including any concerted activity to
24 which section 7 of the National Labor Relations Act
25 (29 U.S.C. 157) applies);

1 “(D) the employer will abide by all applicable
2 laws and regulations relating to the right of workers
3 to join or organize a union;

4 “(E) the employer has provided notice of the
5 filing of the application to the bargaining represent-
6 ative, if any, of the employer’s employees in the oc-
7 cupational classification at the place of employment
8 or, if there is no such bargaining representative, has
9 posted notice of the filing in conspicuous locations at
10 the place of employment for all employees to see for
11 not less than 10 business days for an alien described
12 in clause (ii)(b) of section 101(a)(15)(H) and for not
13 less than 25 business days for an alien described in
14 clause (ii)(c) of such section;

15 “(F) the employer (including its officers, rep-
16 resentatives, agents, or attorneys) has not required
17 the applicant to pay any fee or charge for preparing
18 the application and submitting it to the Secretary of
19 Labor, the Secretary of Homeland Security, or the
20 Secretary of State;

21 “(G) the requirements for the job opportunity
22 represent the employer’s actual minimum require-
23 ments for that job and the employer will not hire
24 nonimmigrant workers with less training or experi-
25 ence;

1 “(H) the employer, within the 60 days prior to
2 the filing of the application and the 60 days fol-
3 lowing the filing, has not laid off, and will not lay-
4 off, any United States worker employed by the em-
5 ployer in any similar position at the place of employ-
6 ment;

7 “(I) the employer, prior to the filing of the ap-
8 plication, has complied with the recruitment require-
9 ments in accordance with paragraph (1); and

10 “(J) no job offer may impose on United States
11 workers any restrictions or obligations that will not
12 be imposed by an employer on a nonimmigrant
13 worker described in clause (ii)(b) or (ii)(c) of section
14 101(a)(15)(H).”.

15 (b) ACCOMPANIED BY JOB OFFER.—Section 212(v)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1182(v)), as amended by subsection (a), is further amend-
18 ed by adding after paragraph (3) the following:

19 “(4) Each application filed under paragraph (3) shall
20 be accompanied by—

21 “(A) a copy of the job offer describing the
22 wages and other terms and conditions of employ-
23 ment;

1 “(B) a statement of the minimum education,
2 training, experience, and requirements for the job
3 opportunity in question;

4 “(C) copies of the documentation submitted to
5 the United States Employment Services within the
6 Department of Labor to recruit United States work-
7 ers in accordance with paragraph (1);

8 “(D) copies of the advertisements to recruit
9 United States workers placed in publications in ac-
10 cordance with paragraph (1); and

11 “(E) a copy of the acknowledgment of receipt
12 provided to the employer by the ES in accordance
13 with paragraph (1)(A).”.

14 (c) INCOMPLETE APPLICATIONS; RETENTION OF AP-
15 PLICATION; FILING OF PETITION.—Section 212(v) of the
16 Immigration and Nationality Act (8 U.S.C. 1182(v)), as
17 amended by subsection (b), is further amended by adding
18 after paragraph (4) the following:

19 “(5) The Secretary of Labor shall review the applica-
20 tion and requisite documents filed in accordance with
21 paragraphs (3) and (4) for completeness and accuracy,
22 and if deficiencies are found, the Secretary of Labor shall
23 notify the employer and provide the employer with an op-
24 portunity to address such deficiencies.

1 “(6) A copy of the application and requisite docu-
2 ments filed with the Secretary of Labor in accordance with
3 paragraphs (3) and (4) shall be retained by the employer
4 in a public access file at the employer’s headquarters or
5 principal place of employment of the alien for the duration
6 of the employment relationship and for 1 year after the
7 termination of that employment relationship.

8 “(7) Upon the approval of an application by the Sec-
9 retary of Labor, an employer who seeks to employ an alien
10 described in clause (ii)(b) or (ii)(c) of section
11 101(a)(15)(H) shall file a petition as required under sec-
12 tion 214(c)(1) with the Bureau of Citizenship and Immi-
13 gration Services within the Department of Homeland Se-
14 curity.

15 “(8) Upon finalization of the visa processing, the Sec-
16 retary of Homeland Security shall issue each alien who
17 obtains legal status under clause (ii)(b) or (ii)(c) of section
18 101(a)(15)(H) with a counterfeit-resistant visa and a doc-
19 ument of authorization, both of which meet all the require-
20 ments established by the Secretary of Homeland Security
21 for travel documents and reflects the benefits and status
22 set forth in this subsection.”.

23 **SEC. 104. WORKER PROTECTIONS.**

24 Section 212(v) of the Immigration and Nationality
25 Act (8 U.S.C. 1182(v)), as amended by section 103, is

1 further amended by adding after paragraph (8) the fol-
2 lowing:

3 “(9)(A) Nothing in this subsection shall be construed
4 to limit the rights of an employee under a collective bar-
5 gaining agreement or other employment contract.

6 “(B) An alien admitted or otherwise provided status
7 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)
8 shall not be denied any right or any remedy under Fed-
9 eral, State, or local labor or employment law that is appli-
10 cable to a United States worker employed in a similar po-
11 sition with the employer because of the status of the alien
12 as a nonimmigrant worker.

13 “(C) It shall be unlawful for an employer who has
14 filed a petition for a nonimmigrant worker described in
15 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) to intimi-
16 date, threaten, restrain, coerce, blacklist, discharge, or in
17 any other manner discriminate against an employee (in-
18 cluding a former employee) because the employee—

19 “(i) disclosed information, to the employer or to
20 any other person, that the employee reasonably be-
21 lieves evidences a violation of this subsection or any
22 rule or regulation pertaining to this subsection; or

23 “(ii) because the employee cooperates or seeks
24 to cooperate in a government investigation or other
25 proceeding concerning the employer’s compliance

1 with the requirements of this subsection or any rule
2 or regulation pertaining to this subsection.

3 “(D) The Secretary of Labor and the Secretary of
4 Homeland Security shall establish a process under which
5 a nonimmigrant worker described in clause (ii)(b) or
6 (ii)(c) of section 101(a)(15)(H) who files a complaint re-
7 garding a violation of this subsection, or any other rule
8 or regulation pertaining to this subsection and is otherwise
9 eligible to remain and work in the United States may be
10 allowed to seek other appropriate employment in the
11 United States for a period not to exceed the maximum
12 period of stay authorized for that nonimmigrant classifica-
13 tion.”.

14 **SEC. 105. NOTIFICATION OF EMPLOYEE RIGHTS.**

15 Section 214(c), of the Immigration and Nationality
16 Act (8 U.S.C. 1184(c)) is amended by adding at the end
17 the following:

18 “(13) An employer that employs an alien de-
19 scribed in clause (ii)(b) or (ii)(c) of section
20 101(a)(15)(H) shall provide such alien with the
21 same notification of the alien’s rights and remedies
22 under Federal, State, and local laws that the em-
23 ployer is required to provide to United States work-
24 ers and, upon request of the United States worker,
25 make available to United States employees a copy of

1 the attested application submitted by the employer
2 regarding that alien to the Secretary of Labor and
3 the application by the employer regarding that alien
4 submitted to the Secretary of Homeland Security.”.

5 **SEC. 106. PORTABILITY.**

6 Section 212(v) of the Immigration and Nationality
7 Act (8 U.S.C. 1182(v)), as amended by section 104, is
8 further amended by adding after paragraph (9) the fol-
9 lowing:

10 “(10)(A) Except as provided in subparagraph (C),
11 any alien admitted or otherwise provided status as a non-
12 immigrant described in section 101(a)(15)(H)(ii)(c) may
13 change employers only after the alien has been employed
14 by the petitioning employer for at least 3 months from
15 the date of admission or the date such status was other-
16 wise acquired.

17 “(B) Except as provided in subparagraph (C), any
18 alien admitted or otherwise provided status as a non-
19 immigrant described in section 101(a)(15)(H)(ii)(b) shall
20 be prohibited from changing employers after the alien has
21 been employed by the petitioning employer.

22 “(C) The 3-month employment requirement in sub-
23 paragraph (A) may be waived (without loss of status dur-
24 ing the period of the waiver) for a nonimmigrant described
25 in section 101(a)(15)(H)(ii)(c) and the employment re-

1 requirement in subparagraph (B) may be waived (without
2 loss of status during the period of the waiver) for a non-
3 immigrant described in section 101(a)(15)(H)(ii)(b) in cir-
4 cumstances where—

5 “(i) the alien began and continued the employ-
6 ment in good faith but the employer violated a term
7 or condition of sponsorship of the alien under this
8 Act or violated any other law or regulation relating
9 to the employment of the alien; or

10 “(ii) the personal circumstances of the alien
11 changed so as to require a change of employer, in-
12 cluding family, medical, or humanitarian reasons, a
13 disability, or other factor rendering the alien unable
14 to perform the job.

15 “(D) If a waiver under subparagraph (C) is sought,
16 the application shall be accompanied by such evidence to
17 warrant the approval of such waiver.

18 “(E) A nonimmigrant alien admitted or otherwise
19 provided status as a nonimmigrant described in clause
20 (ii)(b) or (ii)(c) of section 101(a)(15)(H) may accept new
21 employment with a new employer upon the filing by the
22 new employer of a new application on behalf of such alien
23 as provided under paragraph (3). Employment authoriza-
24 tion shall continue until the new petition is adjudicated.
25 If the new petition is denied, the alien’s right to work as

1 established by this subsection shall cease. The alien’s right
 2 to work, if any, established by any other provision of law,
 3 shall not be affected by the denial of such new applica-
 4 tion.”.

5 **SEC. 107. SPOUSES AND CHILDREN OF WILLING WORKERS.**

6 Section 212(v) of the Immigration and Nationality
 7 Act (8 U.S.C. 1182(v)), as amended by section 106, is
 8 further amended by adding after paragraph (10) the fol-
 9 lowing:

10 “(11) A spouse or child of a nonimmigrant worker
 11 described in clause (ii)(b) or (ii)(c) of section
 12 101(a)(15)(H) shall be eligible for derivative status by ac-
 13 companying or following to join the alien.”.

14 **SEC. 108. PETITIONS BY EMPLOYER GROUPS AND UNIONS.**

15 Section 214(c)(1) of the Immigration and Nationality
 16 Act (8 U.S.C. 1184(c)(1)) is amended—

17 (1) by inserting after the first sentence the fol-
 18 lowing: “In the case of an alien or aliens described
 19 in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H),
 20 the petition may be filed by an associated or affili-
 21 ated group of employers that have multiple openings
 22 for similar employment on behalf of the individual
 23 employers or by a union or union consortium. The
 24 petition, if approved, will be valid for employment in
 25 the described positions for the member employers,

1 the union, or union consortium, provided the em-
 2 ploying entity has complied with all applicable re-
 3 cruitment requirements and paid the requisite peti-
 4 tion fees.”; and

5 (2) by adding at the end the following: “Noth-
 6 ing in this paragraph shall be construed to permit
 7 a recruiting entity or job shop to petition for an
 8 alien described in clause (ii)(b) or (ii)(c) of section
 9 101(a)(15)(H).”.

10 **SEC. 109. PROCESSING TIME FOR PETITIONS.**

11 Section 214(c) of the Immigration and Nationality
 12 Act (8 U.S.C. 1184(c)), as amended by section 105, is
 13 further amended by adding at the end the following:

14 “(14) The Secretary of Labor shall review the appli-
 15 cation filed under section 212(v)(3) for completeness and
 16 accuracy and issue a determination with regard to the ap-
 17 plication not later than 21 days after the date on which
 18 the application was filed.

19 “(15) The Secretary of Homeland Security shall es-
 20 tablish a process for reviewing and completing adjudica-
 21 tions upon petitions filed under this subsection with re-
 22 spect to nonimmigrant workers described in clause (ii)(b)
 23 or (ii)(c) of section 101(a)(15)(H) and derivative applica-
 24 tions associated with these petitions, not later than 60
 25 days after the completed petition has been filed.”.

1 **SEC. 110. TERMS OF ADMISSION.**

2 Section 214(g) of the Immigration and Nationality
3 Act (8 U.S.C. 1184(g)) is amended by adding at the end
4 the following:

5 “(9) In the case of a nonimmigrant described in sec-
6 tion 101(a)(15)(H)(ii)(b), the initial period of authorized
7 admission shall be for not more than 9 months from the
8 date of application for admission in such status in any
9 1-year period. No nonimmigrant described in such section
10 may be admitted for a total period that exceeds 36 months
11 in a 4-year period.

12 “(10) In the case of a nonimmigrant described in sec-
13 tion 101(a)(15)(H)(ii)(c), the initial period of authorized
14 admission shall be for not more than 2 years. The em-
15 ployer may petition for extensions of such status for an
16 additional period of not more than 2 years. No non-
17 immigrant described in such section shall be admitted for
18 a total period that exceeds 4 years.

19 “(11)(A) The limitations described in paragraphs (9)
20 and (10) with respect to the duration of authorized stay
21 shall not apply to any nonimmigrant alien previously
22 issued a visa or otherwise provided nonimmigrant status
23 under section 101(a)(15)(H)(ii)(c) on whose behalf a peti-
24 tion has been filed under section 204(b) to accord the alien
25 immigrant status under section 203(b), or an application
26 for adjustment of status has been filed under section 245

1 to accord the alien status under section 203(b), if 365
2 days or more have elapsed since—

3 “(i) the filing of a labor certification application
4 on behalf of the alien (if such certification is re-
5 quired for the alien to obtain status under section
6 203(b)); or

7 “(ii) the filing of the petition under section
8 204(a).

9 “(B) The Secretary of Homeland Security shall ex-
10 tend the stay of an alien who qualifies for an exemption
11 under subparagraph (A) in 1-year increments until such
12 time as a final decision is made—

13 “(i) to deny the application described in sub-
14 paragraph (A)(i), or, in a case in which such appli-
15 cation is granted, to deny a petition described in
16 subparagraph (A)(ii) filed on behalf of the alien pur-
17 suant to such grant;

18 “(ii) to deny the petition described in subpara-
19 graph (A)(ii); or

20 “(iii) to grant or deny the alien’s application for
21 an immigrant visa or for adjustment of status to
22 that of an alien lawfully admitted for permanent res-
23 idence.

1 “(C) An alien who was granted Deferred Mandatory
 2 Departure status under section 245C may qualify for an
 3 exemption under subparagraph (A).”.

4 **SEC. 111. NUMBER OF VISAS ISSUED.**

5 Section 214(g) of the Immigration and Nationality
 6 Act (8 U.S.C. 1184(g)) is amended—

7 (1) in paragraph (1), by amending subpara-
 8 graph (B) to read as follows:

9 “(B)(i) under section 101(a)(15)(H)(ii)(b)
 10 may not exceed 100,000 in each fiscal year fol-
 11 lowing the fiscal year in which the final regula-
 12 tions implementing the amendments made by
 13 the Strengthening America’s Workforce Act of
 14 2005 are published; and

15 “(ii) under section 101(a)(15)(H)(ii)(c)
 16 may not exceed 250,000 in each fiscal year fol-
 17 lowing the fiscal year in which the final regula-
 18 tions implementing the amendments made by
 19 the Strengthening America’s Workforce Act of
 20 2005 are published.”; and

21 (2) in paragraph (2), by striking “of paragraph
 22 (1) shall” and inserting the following: “under para-
 23 graph (1)—

1 “(A) shall not apply to aliens previously
2 granted Mandatory Deferred Departure under
3 section 245C; and

4 “(B) shall”.

5 **SEC. 112. IMMIGRATION STUDY COMMISSION.**

6 (a) ESTABLISHMENT.—On the date that is 3 years
7 after the date of enactment of this Act, there shall be es-
8 tablished a commission, to be known as the Immigration
9 Study Commission (referred to in this section as the
10 “Commission”) to review the impact of this Act on the
11 national security of the United States, the national econ-
12 omy, and families, and to make recommendations to Con-
13 gress.

14 (b) MEMBERSHIP.—

15 (1) IN GENERAL.—The Commission shall be
16 composed of 12 members, of which—

17 (A) 3 members shall be appointed by the
18 majority leader of the Senate;

19 (B) 3 members shall be appointed by the
20 minority leader of the Senate;

21 (C) 3 members shall be appointed by the
22 Speaker of the House of Representatives; and

23 (D) 3 members shall be appointed by the
24 minority leader of the House of Representa-
25 tives.

1 (2) QUALIFICATIONS.—The Commission mem-
2 bers shall represent the public and private sectors
3 and have expertise in areas that would best inform
4 the work of the Commission, including national secu-
5 rity experts, economists, sociologists, worker rep-
6 resentatives, business representatives, and immigra-
7 tion lawyers.

8 (3) CHAIRPERSON.—The chairperson of the
9 Commission shall be a Commission member agreed
10 upon by the majority and minority leaders of the
11 Senate, and the Speaker and the minority leader of
12 the House of Representatives.

13 (4) COMPENSATION AND EXPENSES.—The
14 members of the Commission shall not receive com-
15 pensation for the performance of services for the
16 Commission, but shall be allowed travel expenses, in-
17 cluding per diem in lieu of subsistence, at rates au-
18 thorized for employees of agencies under subchapter
19 I of chapter 57 of title 5, United States Code, while
20 away from their homes or regular places of business
21 in the performance of services for the Commission.

22 (5) TERMS.—Each member shall be appointed
23 for the life of the Commission. Any vacancy shall be
24 filled by whomever initially appointed the member of
25 that seat.

1 (c) ADMINISTRATIVE PROVISIONS.—

2 (1) LOCATION.—The Commission shall be lo-
3 cated in a facility maintained by the Bureau of Citi-
4 zenship and Immigration Services.

5 (2) DETAIL OF GOVERNMENT EMPLOYEES.—
6 Any Federal Government employee may be detailed
7 to the Commission without reimbursement, and such
8 detail shall be without interruption or loss of civil
9 service status or privilege.

10 (3) INFORMATION FROM FEDERAL AGENCIES.—
11 The Commission may secure directly from any Fed-
12 eral department or agency such information as the
13 Commission considers necessary to carry out the
14 provisions of this section. Upon request of the Com-
15 mission, the head of such department or agency
16 shall furnish such information to the Commission.

17 (4) HEARINGS.—The Commission may hold
18 such hearings, sit and act at such times and places,
19 take such testimony, and receive such evidence as
20 the Commission considers advisable to carry out the
21 objectives of this section, except that, to the extent
22 possible, the Commission shall use existing data and
23 research.

24 (5) POSTAL SERVICES.—The Commission may
25 use the United States mails in the same manner and

1 under the same conditions as other departments and
2 agencies of the Federal Government.

3 (d) REPORT.—Not later than 1 year after all of the
4 members are appointed to the Commission, the Commis-
5 sion shall submit to Congress a preliminary report that
6 summarizes the directions of the Commission and initial
7 recommendations. Not later than 2 years after the Com-
8 mission members are appointed, the Commission shall
9 submit to Congress a report that summarizes the findings
10 of the Commission and make such recommendations as
11 are consistent with this Act.

12 (e) AUTHORIZATION OF APPROPRIATIONS.—There
13 are authorized to be appropriated to the Bureau of Citi-
14 zenship and Immigration Services such sums as may be
15 necessary to carry out this section.

16 **SEC. 113. CHANGE OF STATUS.**

17 Section 212(v) of the Immigration and Nationality
18 Act (8 U.S.C. 1182(v)), as amended by section 107, is
19 further amended by adding after paragraph (11) the fol-
20 lowing:

21 “(12)(A) An alien admitted as a nonimmigrant or
22 otherwise provided status under clause (ii)(b) or (ii)(c) of
23 section 101(a)(15)(H) shall be eligible to obtain a change
24 of status to another immigrant or nonimmigrant classi-
25 fication for which the alien may be eligible.

1 “(B) An alien subject to Mandatory Deferred Departure under section 245C may not adjust to an immigrant classification under this section until after the earlier of—

2 “(i) the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of this paragraph; or

3 “(ii) 8 years after the date of enactment of this paragraph.

4 “(C) An alien may not adjust to an immigrant classification under this section until after the earlier of—

5 “(i) the consideration of all applications filed under section 201, 202, or 203 before the date of enactment of this paragraph; or

6 “(ii) 8 years after such date of enactment.”.

7 **SEC. 114. ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT.**

8 (a) EMPLOYMENT-BASED IMMIGRANT VISAS.—Section 212(v) of the Immigration and Nationality Act (8 U.S.C. 1182(v)), as amended by section 113, is further amended by adding after paragraph (12) the following:

9 “(13)(A) Nonimmigrant aliens admitted or otherwise provided status under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) shall be eligible for an employment-based immigrant visa pursuant to section 203(b)(3) and adjustment of status pursuant to section 245.

1 “(B) Pursuant to subparagraph (A), for purposes of
2 adjustment of status under section 245(a) or issuance of
3 an immigrant visa under section 203(b)(3), employment-
4 based immigrant visas shall be made available, without re-
5 gard to any numerical limitation imposed by section 201
6 or 202, to an alien having nonimmigrant status described
7 in clause (ii)(b) or (ii)(c) of section 101(a)(15)(H) upon
8 the filing of a petition for such a visa by—

9 “(i) the employer or any collective bargaining
10 agent of the alien; or

11 “(ii) the alien, provided the alien has been em-
12 ployed under such nonimmigrant status for at least
13 3 years.

14 “(C) The spouse or child of an alien granted status
15 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H)
16 shall be eligible as a derivative beneficiary for an immi-
17 grant visa and adjustment of status.”.

18 (b) DUAL INTENT.—Section 214(h) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1184(h)) is amended
20 by inserting “(H)(ii)(b), (H)(ii)(c),” after “(H)(i)(b) or
21 (c),”.

22 **SEC. 115. GROUNDS OF INADMISSIBILITY.**

23 Section 212(v) of the Immigration and Nationality
24 Act (8 U.S.C. 1182(v)), as amended by section 114(a),

1 is further amended by adding after paragraph (13) the
 2 following:

3 “(14) In determining the admissibility of an alien
 4 under clause (ii)(b) or (ii)(c) of section 101(a)(15)(H),
 5 violations of grounds of inadmissibility described in para-
 6 graphs (5), (6)(A), (6)(B), (6)(C), (6)(G), (7), (9), and
 7 (10)(B) of section 212(a) committed prior to the applica-
 8 tion under such section, or the approval of a change of
 9 status to a classification under such section shall not apply
 10 if the violation was committed before the date of introduc-
 11 tion of the Strengthening America’s Workforce Act of
 12 2005.”.

13 **SEC. 116. PETITION FEES.**

14 Section 212(v) of the Immigration and Nationality
 15 Act (8 U.S.C. 1182(v)), as amended by section 115, is
 16 further amended by adding after paragraph (14) the fol-
 17 lowing:

18 “(15)(A) An employer filing a petition for an alien
 19 described in section 101(a)(15)(H)(ii)(c) shall be required
 20 to pay a filing fee for each alien, based on the cost of
 21 carrying out the processing duties under this subsection,
 22 and a secondary fee of—

23 “(i) \$250, in the case of an employer employing
 24 25 employees or less;

1 “(ii) \$500, in the case of an employer employ-
2 ing between 26 and 150 employees;

3 “(iii) \$750, in the case of an employer employ-
4 ing between 151 and 500 employees; or

5 “(iv) \$1,000, in the case of an employer em-
6 ploying more than 500 employees.

7 “(B) An employer filing a petition for an alien de-
8 scribed in section 101(a)(15)(H)(ii)(b) shall be required
9 to pay a filing fee for each alien, based on the costs of
10 carrying out the processing duties under this subsection,
11 and a secondary fee of—

12 “(i) \$125, in the case of an employer employing
13 25 employees or less;

14 “(ii) \$250, in the case of an employer employ-
15 ing between 26 and 150 employees;

16 “(iii) \$375, in the case of an employer employ-
17 ing between 151 and 500 employees; or

18 “(iv) \$500, in the case of an employer employ-
19 ing more than 500 employees.

20 “(C) The fees collected under this paragraph shall be
21 deposited into accounts within the Department of Home-
22 land Security, the Department of Labor, and the Depart-
23 ment of State, and allocated such that—

24 “(i) 15 percent of the amounts received shall be
25 made available to the Department of Homeland Se-

1 curity until expended to carry out the requirements
2 related to processing petitions filed by employers for
3 aliens described in clause (ii)(b) or (ii)(c) of section
4 101(a)(15)(H);

5 “(ii) 20 percent of the amounts received shall
6 be made available to the Department of Labor until
7 expended to—

8 “(I) carry out the requirements related to
9 processing attestations filed by employers for
10 aliens described in clause (ii)(b) or (ii)(c) of
11 section 101(a)(15)(H); and

12 “(II) increase the funds available to the
13 United States Employment Services to assist
14 State employment service agencies in respond-
15 ing to employers and employees contacting such
16 agencies as a result of paragraph (1);

17 “(iii) 15 percent of the amounts received shall
18 be made available to the Department of State until
19 expended to carry out the requirements related to
20 processing applications for visas by aliens under
21 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H);

22 “(iv) 5 percent of the amounts received shall be
23 made available for the performance of functions
24 under section 212(t)(9)(F) as the Secretary of
25 Labor and the Special Counsel of the Office of the

1 Special Counsel for Immigration-Related Unfair
 2 Employment Practices within the Department of
 3 Justice may agree;

4 “(v) 30 percent of the amounts received shall be
 5 made available to the Department of Homeland Se-
 6 curity for implementation of border security meas-
 7 ures; and

8 “(vi) 15 percent of the amounts received shall
 9 be made available to the Department of Homeland
 10 Security for the employment eligibility confirmation
 11 program described in section 403(a) of the Illegal
 12 Immigration Reform and Immigrant Responsibility
 13 Act of 1996 (8 U.S.C. 1324a note).”

14 **SEC. 117. DEFINITIONS.**

15 Section 212(v) of the Immigration and Nationality
 16 Act (8 U.S.C. 1182(v)), as amended by section 116, is
 17 further amended by adding after paragraph (16) the fol-
 18 lowing:

19 “(16) In this subsection:

20 “(A) The term ‘employer’ means any person or
 21 entity that employs workers in labor or services that
 22 are not agricultural, and shall not include recruiting
 23 entities or job shops.

24 “(B) The term ‘job opportunity’ means a job
 25 opening for temporary full-time or part-time employ-

1 ment at a place in the United States to which
2 United States workers can be referred.

3 “(C)(i) The term ‘lays off’, with respect to a
4 worker—

5 “(I) means to cause the worker’s loss of
6 employment, other than through a discharge for
7 inadequate performance, violation of workplace
8 rules, cause, voluntary departure, voluntary re-
9 tirement, contract impossibility, termination of
10 the position or company, temporary layoffs due
11 to weather, markets, or other temporary condi-
12 tions; but

13 “(II) does not include any situation in
14 which the worker is offered, as an alternative to
15 such loss of employment, a similar employment
16 opportunity with the same employer at equiva-
17 lent or higher compensation and benefits than
18 the position from which the employee was dis-
19 charged, regardless of whether or not the em-
20 ployee accepts the offer.

21 “(ii) Nothing in this subparagraph is intended
22 to limit an employee’s rights under a collective bar-
23 gaining agreement or other employment contract.

24 “(D) The term ‘United States worker’ means
25 any worker, whether a United States citizen or na-

1 tional, a lawfully admitted permanent resident alien,
 2 or any other alien, who is authorized to work in the
 3 job opportunity within the United States, except an
 4 alien admitted or otherwise provided status under
 5 clause (ii)(b) or (ii)(c) of section 101(a)(15)(H).”.

6 **SEC. 118. COLLECTIVE BARGAINING AGREEMENTS.**

7 Notwithstanding any other provision of law, the fact
 8 that an individual holds a visa as a nonimmigrant worker
 9 described in clause (ii)(b) or (ii)(c) of section
 10 101(a)(15)(H) of the Immigration and Nationality Act (8
 11 U.S.C. 1101(a)(15)(H)) shall not render that individual
 12 ineligible to qualify as an employee under the National
 13 Labor Relations Act (29 U.S.C. 151 et seq.) or to be pro-
 14 tected under section 7 of that Act (29 U.S.C. 157).

15 **SEC. 119. REPORT ON WAGE DETERMINATION.**

16 Not later than 2 years after the date of enactment
 17 of this Act, the Bureau of Labor Statistics shall prepare
 18 and transmit to the Committees on Health, Education,
 19 Labor, and Pensions and the Judiciary of the Senate and
 20 the Committees on Education and the Workforce and the
 21 Judiciary of the House of Representatives, a report that
 22 addresses—

23 (1) whether the employment of workers de-
 24 scribed in clause (ii)(b) or (ii)(c) of section
 25 101(a)(15)(H) of the Immigration and Nationality

1 Act (8 U.S.C. 1101(a)(15)(H)) in the United States
 2 workforce has impacted United States worker wages;

3 (2) whether any changes should be made for a
 4 future wage system, based on factors that include an
 5 examination of the Occupational Employment Sys-
 6 tem survey, its calculation of wage data based on
 7 skill and experience levels and difference among
 8 types of employers, including for profit, nonprofit,
 9 government, and nongovernment;

10 (3) whether use of private, independent wage
 11 surveys would provide accurate and reliable criteria
 12 to determine wage rates; and

13 (4) any other recommendations that are war-
 14 ranted.

15 **SEC. 120. INELIGIBILITY FOR CERTAIN NONIMMIGRANT**
 16 **STATUS.**

17 (a) BAR TO FUTURE VISAS FOR CONDITION VIOLA-
 18 TIONS.—Any alien who has status pursuant to section
 19 245B of the Immigration and Nationality Act, as added
 20 by title III, or clause (ii)(b) or (ii)(c) of section
 21 101(a)(15)(H) of the Immigration and Nationality Act (8
 22 U.S.C. 1101(a)(15)(H)), shall not be eligible in the future
 23 for such nonimmigrant status if the alien materially vio-
 24 lates any term or condition of such status.

1 (b) ALIENS UNLAWFULLY PRESENT.—Any alien who
 2 enters the United States after the date of enactment of
 3 this Act without being admitted or paroled shall be ineli-
 4 gible for nonimmigrant status under clause (ii)(b) or
 5 (ii)(c) of section 101(a)(15)(H) of the Immigration and
 6 Nationality Act (8 U.S.C. 1101(a)(15)(H)).

7 **SEC. 121. INVESTIGATIONS BY DEPARTMENT OF HOME-**
 8 **LAND SECURITY DURING LABOR DISPUTES.**

9 (a) IN GENERAL.—When information is received by
 10 the Department of Homeland Security concerning the em-
 11 ployment of undocumented or unauthorized aliens, consid-
 12 eration should be given to whether the information is
 13 being provided to interfere with the rights of employees
 14 to—

- 15 (1) form, join, or assist labor organizations or
- 16 to exercise their rights not to do so;
- 17 (2) be paid minimum wages and overtime;
- 18 (3) have safe work places;
- 19 (4) receive compensation for work related inju-
- 20 ries;
- 21 (5) be free from discrimination based on race,
- 22 gender, age, national origin, religion, or handicap; or
- 23 (6) retaliate against employees for seeking to
- 24 vindicate those rights.

1 (b) DETERMINATION OF LABOR DISPUTE.—When-
 2 ever information received from any source creates a sus-
 3 picion that an immigration enforcement action might in-
 4 volve the Department of Homeland Security in a labor dis-
 5 pute, a reasonable attempt should be made by Department
 6 of Homeland Security enforcement officers to determine
 7 whether a labor dispute is in progress. The information
 8 officer at the regional office of the National Labor Rela-
 9 tions Board can supply status information on unfair labor
 10 practice charges or union election or decertification peti-
 11 tions that are pending involving most private sector, non-
 12 agricultural employers. Wage and hour information can be
 13 obtained from the Wage and Hour Division of the Depart-
 14 ment of Labor or the State labor department.

15 (c) RELEVANT QUESTIONS FOR INFORMANT.—In
 16 order to protect the Department of Homeland Security
 17 from unknowingly becoming involved in a labor dispute,
 18 persons who provide information to the Department of
 19 Homeland Security about the employer or employees in-
 20 volved in the dispute should be asked—

- 21 (1) their names;
- 22 (2) whether there is a labor dispute in progress
- 23 at the work site;

1 (3) whether the person is or was employed at
2 the work site in question (or by a union representing
3 workers at the work site);

4 (4) if applicable, whether the person is or was
5 employed in a supervisory or managerial capacity or
6 is related to anyone who is;

7 (5) how the person came to know that the sub-
8 jects lacked legal authorization to work, as well as
9 the source and reliability of the information con-
10 cerning the subject's status;

11 (6) whether the person had or is having a dis-
12 pute with the employer or the subjects of the infor-
13 mation; and

14 (7) if the subjects of the information have
15 raised complaints or grievances about hours, work-
16 ing conditions, discriminatory practices, or union
17 representation or actions, or whether the subjects
18 have filed workers' compensation claims.

19 (d) BICE REVIEW.—There is no prohibition for en-
20 forcing the Immigration and Nationality Act (8 U.S.C.
21 1101 et seq.), even when there may be a labor dispute
22 in progress, however, where it appears that information
23 may have been provided in order to interfere with or to
24 retaliate against employees for exercising their rights, no
25 action should be taken on this information without review

1 and approval by the Bureau of Immigration and Customs
2 Enforcement.

3 (e) ENFORCEMENT ACTION.—When enforcement ac-
4 tion is taken by the Department of Homeland Security
5 and the Department determines that there is a labor dis-
6 pute in progress, or that information was provided to the
7 Department of Homeland Security to retaliate against em-
8 ployees for exercising their employment rights, the lead
9 immigration officer in charge of the Department of Home-
10 land Security enforcement team at the work site must en-
11 sure, to the extent possible, that any aliens who are ar-
12 rested or detained and are necessary for the prosecution
13 of any violations are not removed from the country with-
14 out notifying the appropriate law enforcement agency that
15 has jurisdiction over the violations.

16 (f) INTERVIEWS.—Any arrangements for aliens to be
17 held or interviewed by investigators or attorneys for the
18 Department of Labor, the State labor department, the Na-
19 tional Labor Relations Board, or any other agencies or
20 entities that enforce labor or employment laws will be de-
21 termined on a case-by-case basis.

22 **SEC. 122. PROTECTION OF WITNESSES.**

23 Chapter 8 of title II of the Immigration and Nation-
24 ality Act (8 U.S.C. 1321 et seq.) is amended by adding
25 after section 280 the following:

1 “STAY OF REMOVAL

2 “SEC. 280A. (a) An alien against whom removal pro-
3 ceedings have been initiated pursuant to chapter 4, who
4 has filed a workplace claim or who is a material witness
5 in any pending or anticipated proceeding involving a work-
6 place claim, shall be entitled to a stay of removal and to
7 an employment authorized endorsement unless the De-
8 partment of Labor established by a preponderance of the
9 evidence in proceedings before the immigration judge pre-
10 siding over that alien’s removal hearing—

11 “(1) that—

12 “(A) the Department of Homeland Secu-
13 rity initiated the alien’s removal proceeding for
14 wholly independent reasons and not in any re-
15 spect based on, or as a result of, any informa-
16 tion provided to or obtained by the Department
17 of Homeland Security from the alien’s em-
18 ployer, from any outside source, including any
19 anonymous source, or as a result of the filing
20 or prosecution of the workplace claim; and

21 “(B) the workplace claim was filed with a
22 bad-faith intent to delay or avoid the alien’s re-
23 moval; or

1 “(2) that the alien has engaged in criminal con-
2 duct or is a threat to the national security of the
3 United States.

4 “(b) Any stay of removal or work authorization
5 issued pursuant to subsection (a) shall remain valid and
6 in effect at least during the pendency of the proceedings
7 concerning such workplace claim. The Secretary of Home-
8 land Security shall extend such relief for a period of not
9 longer than 3 additional years upon determining that—

10 “(1) such relief would enable the alien asserting
11 the workplace claim to be made whole;

12 “(2) the deterrent goals of any statute under-
13 lying the workplace claim would thereby be served;
14 or

15 “(3) such extension would otherwise further the
16 interests of justice.

17 “(c) In this section—

18 “(1) the term ‘workplace claim’ shall include
19 any claim, charge, complaint, or grievance filed with
20 or submitted to the employer, a Federal or State
21 agency or court, or an arbitrator, to challenge an
22 employer’s alleged civil or criminal violation of any
23 legal or administrative rule or requirement affecting
24 the terms or conditions of its workers’ employment
25 or the hiring or firing of its workers; and

1 “(2) the term ‘material witness’ means an indi-
2 vidual who presents an affidavit from an attorney
3 prosecuting or defending the workplace claim or
4 from the presiding officer overseeing the workplace
5 claim attesting that, to the best of the affiant’s
6 knowledge and belief, reasonable cause exists to be-
7 lieve that the testimony of the individual will be cru-
8 cial to the outcome of the workplace claim.

9 “CONFIDENTIALITY OF IMMIGRATION INFORMATION
10 OBTAINED DURING ADMINISTRATIVE PROCEEDINGS

11 “SEC. 280B. (a) No officer or employee, including
12 any former officer or employee, of any Federal or State
13 administrative agency with jurisdiction over any employ-
14 er’s workplace shall disclose to the Department of Home-
15 land Security, or cause to be published in a manner that
16 discloses to the Department of Homeland Security, any
17 information concerning the immigration status of any
18 worker obtained by that officer or employee in connection
19 with the official duties of that officer or employee, and
20 the Department of Homeland Security shall not, in any
21 enforcement action or removal proceeding, use or rely
22 upon, in whole or in part, any information so obtained.
23 “(b) Any person who knowingly uses, publishes, or
24 permits information to be used in violation of subsection
25 (a) shall be fined not more than \$10,000.”.

1 **SEC. 123. DOCUMENT FRAUD.**

2 Section 274C(d)(3) of the Immigration and Nation-
 3 ality Act (8 U.S.C. 1324c(d)(3)) is amended by inserting
 4 before “In applying this subsection” the following: “The
 5 civil penalties set forth in subparagraphs (A) and (B) shall
 6 be tripled in the case of any commercial enterprise that
 7 commits any violation of subsection (a) principally for
 8 commercial advantage or financial gain.”.

9 **TITLE II—NONIMMIGRANT VISAS**
 10 **FOR HIGHLY EDUCATED AND**
 11 **SKILLED WORKERS**

12 **SEC. 201. EXEMPTION OF NONIMMIGRANTS WITH AD-**
 13 **VANCED DEGREES FROM NUMERICAL LIMITS.**

14 Section 214(g)(5) of the Immigration and Nationality
 15 Act (8 U.S.C. 1184(g)(5)) is amended—

16 (1) by redesignating subparagraphs (A) and
 17 (B) as clauses (i) and (ii), respectively; and

18 (2) by striking “who is employed” and inserting
 19 the following: “who—

20 “(A) has earned an advanced degree in
 21 science, technology, engineering, or math from
 22 an accredited university in the United States;
 23 or

24 “(B) is employed”.

1 **SEC. 202. ALIENS NOT SUBJECT TO NUMERICAL LIMITA-**
2 **TIONS ON EMPLOYMENT-BASED IMMI-**
3 **GRANTS.**

4 (a) IN GENERAL.—Section 201(b)(1) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is
6 amended by adding at the end the following:

7 “(F) Aliens who have earned an advanced de-
8 gree in science, technology, engineering, or math and
9 have been working in a related field in the United
10 States under a nonimmigrant visa during the 3-year
11 period preceding their application for an immigrant
12 visa under section 203(b).

13 “(G) Aliens described in subparagraph (A) or
14 (B) of section 203(b)(1)(A) or who have received a
15 national interest waiver under section 203(b)(2)(B).

16 “(H) The immediate relatives of an alien who
17 is admitted as an employment-based immigrant
18 under section 203(b).”.

19 (b) APPLICABILITY.—The amendments made by sub-
20 section (a) shall apply to any visa application pending on
21 the date of enactment of this Act and any visa application
22 filed on or after such date of enactment.

1 **TITLE III—FOREIGN STUDENT**
2 **WORK AUTHORIZATION**

3 **SEC. 301. OFF CAMPUS WORK AUTHORIZATION FOR FOR-**
4 **EIGN STUDENTS.**

5 (a) IN GENERAL.—Aliens admitted as nonimmigrant
6 students described in section 101(a)(15)(F) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1101(a)(15)(F))
8 may be employed in an off-campus position unrelated to
9 the alien’s field of study if—

10 (1) the alien has enrolled full time at the edu-
11 cational institution and is maintaining good aca-
12 demic standing;

13 (2) the employer provides the educational insti-
14 tution and the Secretary of Labor with an attesta-
15 tion that the employer—

16 (A) has spent at least 21 days recruiting
17 United States citizens to fill the position; and

18 (B) will pay the alien and other similarly
19 situated workers at a rate equal to not less
20 than the greater of—

21 (i) the actual wage level for the occu-
22 pation at the place of employment; or

23 (ii) the prevailing wage level for the
24 occupation in the area of employment; and

25 (3) the alien will not be employed more than—

1 (A) 20 hours per week during the aca-
2 demic term; or

3 (B) 40 hours per week during vacation pe-
4 riods and between academic terms.

5 (b) DISQUALIFICATION.—If the Secretary of Labor
6 determines that an employer has provided an attestation
7 under subsection (a)(2) that is materially false or has
8 failed to pay wages in accordance with the attestation, the
9 employer, after notice and opportunity for a hearing, shall
10 be disqualified from employing an alien student under this
11 section.

○